

United States
Circuit Court of Appeals
For the Ninth Circuit.

THE UNITED STATES OF AMERICA,

Appellant,

vs.

WILLIAM B. POLAND and FREDERICK WILLIAM
LOW,

Appellees.

Transcript of Record.

Upon Appeal from the United States District Court for
the District of Alaska, Division No. 3.

Filed

AUG 2 - 1915

F. D. Monckton,
Clerk.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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*In the District Court for the Territory of Alaska,
Division Number Three.*

No. 593.

UNITED STATES OF AMERICA,

Plaintiffs,

vs.

WILLIAM B. POLAND and FREDERICK WILLIAM LOW,

Defendants.

Order Granting Leave to File Amended Complaint.

This cause coming on for hearing this day, on the application of the plaintiffs for leave to file the amended complaint tendered with said application, G. B. Brubaker, Assistant United States Attorney, appearing on behalf of the plaintiffs, and the defendants appearing by their attorney, S. O. Morford, Esq., good cause appearing therefore:

It is hereby ordered that plaintiffs be, and they are hereby, granted leave to file said amended complaint;

And it further ordered that the defendants have forty days from the date of the service of said amended complaint within which to answer the same.

Done in open court this 15th day of October, 1914.

FRED M. BROWN,

District Judge.

To which order defendant excepts and exception is allowed.

FRED M. BROWN,
District Judge.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Oct. 15, 1914. Arthur Lang, Clerk. By T. P. Geraghty, Deputy.

Entered: Court Journal S-1, page, 319. [4]

*In the District Court for the District of Alaska,
Division Number Three.*

IN EQUITY.

UNITED STATES OF AMERICA,

Plaintiffs,

vs.

WILLIAM B. POLAND and FREDERICK WILLIAM LOW,

Defendants.

Amended Complaint.

Come now the above-named plaintiffs, the United States of America, by and through William N. Spence, United States Attorney for the Third Division of the District of Alaska, acting under authority and by direction of the Attorney General of the United States, and for cause of action against the above-named defendants alleges:

I.

That heretofore, to wit, on or about the 6th day of September, 1905, the above-named defendant, William B. Poland, entered upon and took posses-

sion of the land hereinafter described, said land being then and there part of the public lands and public domain of the United States, with the purpose and intent of acquiring title thereto as the assignee of certain soldier's additional homestead entry rights, pursuant to Section 2306 of the Revised Statutes of the United States and Acts amendatory thereto, and caused an official survey thereof to be made, whereby said land was surveyed in the form of two tracts or parcels of land; that said land, entered and surveyed as aforesaid, is in the Kenai Recording Precinct, District of Alaska, and more particularly bounded and described as follows: [5]

United States Survey No. 241.

Beginning at corner No. 1 on the shore of Resurrection Bay, latitude sixty degrees, seven minutes north, longitude one hundred forty-nine degrees, seven minutes west, said point being marked by an iron pin three inches in diameter, marked "S. 241, cor. No. 1," thence south sixty-one degrees, thirty-seven minutes west two and sixty-one-hundredths chains; thence, south seventy-eight degrees, west nineteen and ten-hundredths chains; thence, south fifty-two degrees, fifteen minutes west ten chains; thence, south seventy-one degrees, fifty minutes west three chains; thence, south thirty-one degrees, twenty-seven minutes west three and twenty-hundredths chains to corner No. 2, which corner is marked by an iron pipe three inches in diameter, marked "S. 241 cor. No. 2," thence,

west six and fifty-nine-hundredths chains to corner No. 3, which corner is marked by an iron pipe three inches in diameter marked "S. 241 cor. No. 3," thence north forty-seven and eighty-eight-hundredths chains to corner No. 4, which corner is marked by an iron stake three inches in diameter marked "S. 241 cor. No. 4," thence, east forty chains to corner No. 5, which corner is marked by iron pipe three inches in diameter, marked "S. 241 cor. No. 5," thence south thirty-two and eighty-eight-hundredths chains to corner No. 1, the place of beginning, containing one hundred-fifty-nine and seventy-five-one-hundredths acres, being the land embraced in United States Survey No. 241, according to the official plat of said survey returned to the general land office by the Surveyor General, and;

United States Survey No. 242.

Beginning at corner No. 1 near the north shore of Resurrection Bay, identical with corner No. 5, U. S. Survey No. 241, an iron pipe three inches in diameter, marked S. 242, cor. No. 1; thence west 40 chains to corner No. 2, an iron pipe three inches in diameter, marked S. 242, cor. No. 2; thence north 40 chains to corner No. 3, an iron pipe three inches in diameter, marked S. 242, cor. No. 3; thence east 40 chains to corner No. 4, an iron pipe three inches in diameter marked S. 242, cor. No. 4; thence south 40 chains to corner No. 1, the place of beginning, containing one hundred and sixty acres, being

the land embraced within United States Survey No. 242, according to the official plat of said survey returned to the general land office by the Surveyor General.

That the land embraced within said survey constitutes and is a single body of land, containing 319.75 acres.

II.

That thereafter, to wit, on the 26th day of April, 1906, the said William B. Poland filed in the United States Land Office, at Juneau, Alaska, two applications [6] whereby he, as the assignee of certain soldier's additional homestead entry rights applied under Section 2306 of the Revised Statutes of the United States to enter the land above described, one of said applications covering the entry embraced in said Survey No. 241 and the other application covering the land embraced in said Survey No. 242.

III.

That thereafter, to wit, on the 20th day of January, 1908, the requisite proofs having been made, a patent for the land embraced in said Survey No. 241 was issued to the said William B. Poland, a copy of which patent is hereto attached, marked exhibit "A," and made a part hereof.

IV.

That, on the 30th day of July, 1906, the defendant, William B. Poland, filed or caused to be filed in the United States Land Office at Juneau, Alaska, in support of his said application for a patent to the land embraced in said Survey No. 242, an affidavit,

subscribed and sworn to by H. E. Revell and Frank Ballaine, which affidavit contained the following false statement:

Said tract of land (referring to the land embraced in said Survey No. 242) does not exceed 160 acres in extent and is in frontage less than 160 rods along the shore of any navigable water, and is more than eighty rods distant from any other survey or entry under the provisions of said Act of May 14th, 1898,

the Act referred to in said statement being Act of Congress entitled "An Act extending the homestead laws and providing for a right of way for railroads in the district of Alaska, and for other purposes," approved May 14, 1898, as amended by the Act of Congress entitled "An Act to amend [7] Section One of the Act of Congress approved May fourteenth, eighteen hundred and ninety-eight, entitled 'An Act extending the homestead laws and providing for a right of way for railroads in the district of Alaska,'" approved March 3, 1903.

That said statement was and is false in this, that said tract of land referred to in said affidavit was not more than eighty rods distant from any other survey or entry under the provisions of said Act of May 14th, 1898, as then amended, but was adjoining and contiguous to that certain tract of land embraced within said Survey No. 241, upon which a soldier's additional homestead entry and survey had been theretofore made by the said William B. Poland as hereinbefore set forth, and was part and parcel of

a single body of land containing more than one hundred and sixty acres, to wit, 319.75 acres, entered by soldier's additional homestead entry rights under said Act of May 14th, 1898, as amended, said single body of land being the land embraced within said Surveys No. 241 and No. 242.

That said statement was false and fraudulent in that it concealed from the officials of the Land Department of the United States the fact that land in excess of one hundred and sixty acres in a single body was entered by soldier's additional homestead right under the application of the said defendant, William B. Poland, in support of which application said affidavit was filed.

V.

That by means of said false affidavit filed as aforesaid, the said defendant, William B. Poland, knowingly, falsely and fraudulently, represented to plaintiffs and to the officials of the Land Department of the United States, whose duty it was to pass upon said application, that no land in excess of one hundred and sixty acres in a single [8] body in Alaska was entered and applied for by soldier's additional homestead rights under said application; whereas in truth and in fact land in excess of one hundred and sixty acres in a single body in Alaska was thereby entered and applied for under soldier's additional homestead rights, which fact the said defendant, William B. Poland, then and there well knew; that the said defendant, William B. Poland, caused said false affidavit to be filed as aforesaid and

said false and fraudulent representations to be made by means thereof, with the intent and for the purpose of deceiving said officials of the Land Department of the United States and leading them erroneously to believe that the land embraced within said Survey No. 242 was open and subject to entry and patent under soldier's additional homestead rights and to induce said officials to cause a patent to issue therefor, and with the further intent to defraud plaintiffs and unlawfully to deprive plaintiffs of the use and enjoyment of said land embraced in said Survey No. 242.

VI.

That the Assistant Commissioner of the General Land Office of the United States, relying upon the aforesaid false and fraudulent representations and believing them to be true and being induced thereby so to do, in the erroneous and mistaken belief that the land embraced within said Survey No. 242 was open and subject to entry and patent under soldier's additional homestead rights and that the defendant, William B. Poland, was lawfully entitled to a patent thereto, mistakenly, erroneously, without authority and in violation of law, and without jurisdiction so to do, approved said entry and application for a patent to the land embraced in said Survey No. 242; and thereafter, to wit, [9] on the 22d day of March, 1909, the President of the United States, likewise relying upon and being likewise deceived and induced by said false and fraudulent representations, under the same misapprehension as to the law and the facts, mistakenly, erroneously, without authority

and in violation of law, and without jurisdiction so to do, caused to be signed, executed and delivered to the said defendant, William B. Poland, a patent to the land embraced within said Survey No. 242, a copy of which patent is hereto attached, marked exhibit "B," and made a part hereof.

VII.

That Congress passed an Act approved March 3, 1903, entitled "An Act to amend Section One of the Act of Congress approved May 14, 1898, entitled 'An Act extending the homestead laws and providing for a right of way for railroads in the District of Alaska,'" which, among other things, provides that no more than one hundred and sixty acres shall be entered in any single body by soldier's additional homestead right.

That the land embraced within said Survey No. 242 was by the provision of the Act of Congress above mentioned reserved from entry and patent under soldier's additional homestead right by virtue of the soldier's additional homestead entry theretofore made by the said defendant, William B. Poland, upon the land embraced within said Survey No. 241; that by force of the foregoing, the patent issued to the said defendant, William B. Poland, for the land embraced within said Survey No. 242 was and is null and void for the reason that more than one hundred and sixty acres of land in a [10] single body entered by soldier's additional homestead rights was thereby attempted to be granted to the defendant, William B. Poland.

VIII.

That thereafter, to wit, on the 25th day of May, 1909, the said William B. Poland made, executed and delivered to the above-named defendant, Frederick William Low, a deed, wherein and whereby he conveyed, bargained, sold and confirmed unto the said Frederick William Low, and to his heirs and assigns forever, the land hereinbefore described, and covenanting to and with the said Low to warrant and defend the same against any and all persons claiming or to claim title thereto; a copy of which deed is hereto attached, marked exhibit "C," and made a part hereof.

IX.

That the land embraced within said Survey No. 242 during all the times hereinbefore mentioned was and now is public land and part of the public domain of the United States and the said United States have been at all times, and now are, entitled to the immediate possession thereof; that the aforesaid patent to the land embraced within said Survey No. 242 and the deed hereinbefore mentioned, in so far as said deed refers to the land embraced within said Survey No. 242 are, and each of them is, a cloud upon plaintiffs' title to said land.

X.

That plaintiffs have no plain, speedy or adequate remedy at law.

WHEREFORE, plaintiffs pray that said patent for the land embraced within said Survey No. 242 be vacated, cancelled and declared to be null and

void, and that said [11] deed from the defendant William B. Poland to Frederick William Low, in so far as the same refers to the land embraced within said Survey No. 242, be vacated, cancelled, and declared to be null and void; that plaintiffs have and recover from the defendants their costs and disbursements herein and for such further relief as to the Court may seem just and equitable in the premises.

WILLIAM N. SPENCE,
United States Attorney for the Third Division of
the District of Alaska.

GUY B. BRUBAKER,
Assistant United States Atty.

United States of America,
District of Alaska,
Third Division,—ss.

Guy B. Brubaker, being first duly sworn, upon oath, deposes and says: That he is the Assistant United States Attorney for the Third Division, Territory of Alaska, and attorney for the plaintiffs in the foregoing cause; that he makes this verification for and on behalf of said plaintiffs; that the foregoing amended complaint is signed by him in his own proper handwriting; that he has read the same; has knowledge of all the material allegations therein set forth, and that he believes the same to be true.

G. B. BRUBAKER.

Subscribed and sworn to before me this 15 day of October, *September*, 1914.

[Seal]

WM. H. WHITTLESEY,
Notary Public for Alaska.

Filed in the District Court, Territory of Alaska,
Third Division. Oct. 15, 1914. Arthur Lang, Clerk.
By T. P. Geraghty, Deputy. [12]

Exhibit "A" [to Amended Complaint].

THE UNITED STATES OF AMERICA,
To all to whom these presents shall come, Greeting:
Homestead Certificate No. 80.
Application 80.

Whereas, there has been deposited in the General Land Office of the United States a Certificate of the Register of the Land Office at Juneau, Alaska, whereby it appears that, pursuant to the Act of Congress approved 20th May, 1862, "To secure Homesteads to Actual Settlers on the Public Domain," and the acts supplemental thereto, including the Act of March 3, 1891 (26 Statutes 1099), and the Act of May 14, 1898 (30 Statutes, 409), the claim of William B. Poland, assignee of William F. Isbell and Edward McArdle, has been established and duly consummated in conformity to law, for the lands embraced in U. S. Survey No. 241, situated on the shore of Resurrection Bay, Alaska, more particularly bounded and described as follows, with magnetic variation twenty-seven degrees, two minutes east:

Beginning at corner No. 1 on the shore of Resurrection Bay, latitude sixty degrees, seven minutes north, longitude one hundred forty-nine degrees, seven minutes west, said point being marked by an iron pin three inches in diameter, marked "S. 241, cor. No. 1," thence, south sixty-one degrees, thirty-

seven minutes west two and sixty-one hundredths chains; thence, south seventy-eight degrees, west nineteen and ten-hundredths chains; thence, south fifty-two degrees, fifteen minutes west ten chains; thence, south seventy-one degrees, fifty minutes west three chains; thence, south thirty-one degrees, twenty-seven minutes west three and twenty-hundredths chains to corner No. 2, which corner is marked by an iron pipe three inches in diameter, marked "S. 241 cor. No. 2," thence, west six and fifty-nine-hundredths chains to corner No. 3, which corner is marked by iron pipe three inches in diameter, marked "S. 241 cor. No. 3"; thence, north forty-seven and eighty-eight hundredths chains to corner No. 4, which corner is marked by an iron stake three inches in diameter, marked "S. 241 cor. No. 4"; thence east forty chains to corner No. 5, which corner is marked by iron pipe three inches in diameter, marked "S. 241 cor. No. 5," thence south thirty-two and eighty-eight-hundredths chains to corner No. 1, the place of beginning, containing one hundred fifty-nine and seventy-five-hundredths acres;

NOW KNOW YE, That the UNITED STATES OF AMERICA, in consideration of the premises, HAVE GIVEN AND GRANTED, and by these presents DO GIVE AND GRANT, unto the said William B. Poland, and to his heirs, the lands above described; TO HAVE AND TO HOLD the same, together with all the rights, privileges, immunities and appurtenances, of whatsoever nature hereunto belonging, unto the said William B. Poland and to his heirs and assigns forever. And there is reserved,

from the lands hereby granted, a right of way thereon for ditches or canals constructed by the authority of the United States and a roadway sixty feet in width parallel to the shore line as near as may be practicable [13] shall be reserved for the use of the public as a highway. And reserving to the United States the right to regulate the taking of salmon and to do all things necessary to protect and prevent the destruction of salmon in all waters of the lands hereby granted, and ingress and egress are reserved to the public on the waters of all streams, whether navigable or otherwise.

IN TESTIMONY WHEREOF, I Theodore Roosevelt, President of the United States of America, have caused these letters to be made Patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the City of Washington, the twentieth day of January, in the year of our Lord one thousand nine hundred and eight and of the Independence of the United States the one hundred and thirty-second.

By the President,

THEODORE ROOSEVELT.

By H. W. SANFORD,

Recorder of the General Land Office. [14]

Exhibit "B" [to Amended Complaint].

THE UNITED STATES OF AMERICA.

To all to whom these presents shall come, greeting.

Juneau 0289.

Homestead Certificate No.

Application.

WHEREAS, There has been deposited in the General Land Office of the United States a Certificate of the Register of the Land Office at Juneau, Alaska, whereby it appears that, pursuant to the Act of Congress approved 20th May, 1862, "To secure Homesteads to Actual Settlers on the Public Domain," and the acts supplemental thereto, the claim of William B. Poland, Assignee of Harold M. Fay, minor orphan child of Clinton B. Fay by Ida L. Fay, guardian, and Wyllis S. Walkley, has been established and duly consummated, in conformity to law, for the lands embraced in U. S. Survey No. 242, more particularly bounded and described as follows; Beginning at corner No. 1, near the north shore of Resurrection Bay, identical with corner No. 5, U. S. Survey No. 241, an iron pipe three inches in diameter, marked S. 242, cor. No. 1; thence west forty chains to corner No. 2, an iron pipe three inches in diameter, marked S. 242, cor. No. 2, thence north forty chains to corner No. 3, an iron pipe three inches in diameter marked S. 242, cor. No. 3, thence east 40 chains to corner No. 4, an iron pipe three inches in diameter marked S. 242, cor. No. 4, thence south 40 chains to corner No. 1, the place of beginning, in the District of Alaska, containing one hundred sixty

acres, according to the Official Plat of the Survey of the said Land, returned to the General Land Office by the Surveyor General.

NOW KNOW YE, That there is, therefore, granted by the UNITED STATES unto the said William B. Poland the tract of land above described; TO HAVE AND TO HOLD the said tract of land, with the appurtenances thereof, unto the said William B. Poland and to his heirs and assigns forever; subject to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights, as may be recognized and acknowledged by the local customs, laws, and decisions of courts, and also subject to the right of the proprietor of a vein or lode to extract and remove his ore therefrom, should the same be found to penetrate or intersect the premises hereby granted, as provided by law. And there is reserved from the lands hereby granted, a right of way thereon for ditches or canals constructed by the authority of the United States.

IN TESTIMONY WHEREOF, I, William H. Taft, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the City of Washington, the twenty-second day of March in the year of our Lord one thousand nine hundred and nine, and of

the Independence of the United States the one hundred and thirty-third.

By the President,

[Seal]

WM. H. TAFT.

By M. W. YOUNG,

Secretary.

H. W. SANFORD,

Recorder of the General Land Office. [15]

Demurrer [of William B. Poland et al. to Amended Complaint].

This indenture, made this 25th day of May, A. D. 1909, between Wm. B. Poland, a bachelor, by Francis H. Stewart, his attorney in fact under power of attorney, the party of the first part, and Frederick William Low, of the City of Seattle, County of King, and State of Washington, party of the second part:

Witnesseth: That the said party of the first part, for and in consideration of the sum of One (\$1.00) Dollar, gold coin of the United States of America, to him in hand paid by the said party of the second part and other good and valuable considerations, the receipt whereof is hereby acknowledged, does by these presents, grant, bargain, sell, convey and confirm unto the said party of the second part, and to his heirs and assigns that parcel or parcels of land situated and being at the head of Resurrection Bay, in the Territory of Alaska, covered by United States official surveys No. 241 and 242 and patents from the United States Government for same, described as follows, with magnetic variation twenty-seven degrees and two minutes East, U. S. Survey No. 241;

Beginning at corner No. 1 on the shore of Resurrection Bay, latitude sixty degrees, seven minutes north, longitude one hundred forty-nine degrees seven minutes west, said point being marked by an iron pin three inches in diameter, marked "S. 241, cor. No. 1; thence, south sixty-one degrees, thirty-seven minutes west two and sixty-one hundredths chains; thence, south seventy-eight degrees, west nineteen and ten hundredths chains; thence, south fifty-two degrees, fifteen minutes west ten chains; thence, south seventy-one degrees, fifty minutes west three chains; thence south; thence thirty-one degrees, twenty-seven minutes west three and twenty-hundredths chains to corner No. 2, which corner is marked by an iron pipe three inches in diameter, marked "S. 241 cor. No. 2," thence west six and fifty-nine-hundredths chains to cor. No. 3, which corner is marked by iron pipe three inches in diameter, marked "S. 241, cor. No. 3"; thence, north forty-seven and eighty-eight hundredths chains to corner No. 4, which corner is marked by an iron stake three inches in diameter, marked "S. 241, cor. No. 4"; thence, east forty chains to corner No. 5, which corner is marked by iron pipe three inches in diameter, marked "S. 241, cor. No. 5"; thence, south thirty-two and eighty-eight hundredths chains to corner No. 1, the place of beginning, containing one hundred fifty-nine and seventy-five-hundredths acres;

Also the lands embraced in U. S. Survey No. 242, magnetic variation twenty-seven degrees and two

minutes east, beginning at corner No. 1 near the north shore of Resurrection Bay, which corner is identical with corner No. 5, U. S. Survey No. 241, said corner being marked by iron pipe three inches in diameter marked "S. 242, cor. No. 1," west 40.00 chains to corner No. 2, said corner being marked by iron pipe three inches in diameter marked "S. 242, cor. No. 2"; thence north 40.00 chains to corner No. 3, said corner being marked by iron pipe three inches in diameter marked "S. 242, cor. No. 3"; thence east 40.00 chains to corner No. 4, said corner being marked by iron pipe three inches in diameter marked "S. 242 cor. No. 4"; thence south 40.00 chains to corner No. 1, the place of beginning, containing one hundred and sixty acres. [16]

Together, with the appurtenances, to have and to hold the said premises with the appurtenances, unto the said party of the second part, and to his heirs and assigns forever.

And the said party of the first part, his heirs, executors and administrators, does by these presents, covenant, grant and agree to and with the said party of the second part, his heirs and assigns, that he, the said party of the first part, his heirs, executors and administrators, all and singular, the premises hereinabove conveyed, described and granted or mentioned, with the appurtenances, unto the said party of the second part, his heirs and assigns, and against all and every person or persons whomsoever lawfully claiming or to claim the same or any part thereof shall and will warrant and forever defend.

In Witness Whereof, the said party of the first part has hereunto set his hand and seal the day and year first above written.

WILLIAM B. POLAND. (Seal.)

By FRANCIS H. STEWART, (Seal)

His Attorney in Fact.

Signed, sealed and delivered in presence of

G. S. SCHOFIELD,

GEORGE P. BAGG.

State of New York,

County of New York,—ss.

This is to certify, that on this 25th day of May, A. D. 1909, before me, the undersigned, a notary public in and for the County of New York, and State of New York, duly commissioned and sworn, personally came Francis H. Stewart to me known to be the individual described in and who executed the within instrument, and acknowledged to me that he signed and sealed the same as his free and voluntary act and deed as the agent and Attorney in Fact for and on behalf of William B. Poland, Bachelor, and for the uses and purposes therein mentioned.

Witness my hand and official seal the day and year in this certificate first above written.

LETITIA M. HODGINS,

Notary Public in and for New York County, New York.

State of New York,

County of New York,—ss.

I, Peter J. Dooling, Clerk of the County of New York, and also Clerk of the Supreme Court for the

said county, the same being a court of record, do hereby certify that Letitia M. Hodgins, whose name is subscribed to the certificate of the proof or the acknowledgment of the annexed instrument and thereon written, was at the time of taking such proof or acknowledgment, a Notary Public in and for the County of New York, dwelling in the said county, commissioned and sworn, and duly authorized to take the same. And further that I am well acquainted with the handwriting of such notary and verily believe that the signature to the said certificate of proof or acknowledgment is genuine.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said court and county, the 28th day of May, 1909.

[Seal]

PETER J. DOOLING,

Clerk.

The foregoing instrument filed for record Nov. 18, 1909, at 11 A. M. by request S. O. Morford.

J. J. FINNEGAN,

District Recorder. C. [17]

Due service of the foregoing amended complaint is hereby acknowledged.

At Seward, Alaska, this 15th day of October, 1914.

S. O. MORFORD,

Attorney for Defendants. [18]

*In the District Court for the Territory of Alaska,
Third Division.*

#593.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

WILLIAM B. POLAND and FREDERICK WILLIAM LOW,

Defendants.

Demurrer.

Come now the defendants, William B. Poland and Frederick William Low, by their attorney, and demur to plaintiff's amended complaint on file herein, and for cause of demurrer state;

That said amended complaint does not state facts sufficient to constitute a cause of action against these defendants or either of them, either in law or equity.

S. O. MORFORD,

Attorney for Defendants.

Service of copy accepted this 24 day of November,
A. D. 1914.

WM. H. WHITTLESEY,

Asst. U. S. Attorney.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Dec. 23, 1914. Arthur Lang, Clerk. By T. P. Geraghty, Deputy. [19]

*In the District Court for the District of Alaska,
Division Number Three.*

No. 593.

UNITED STATES OF AMERICA,

Plaintiffs,

vs.

WILLIAM B. POLAND and FREDERICK WILLIAM LOW,

Defendants.

**Demurrer of Defendant Frederick William Low
[to Amended Complaint].**

Comes now Frederick William Low, one of the defendants above named, by his attorneys, Ira Bronson and S. O. Morford, and demurs to the amended complaint of the plaintiff herein on the ground that said complaint does not state facts sufficient to constitute a cause of action or to entitle the plaintiffs to any relief in equity against this defendant.

S. O. MORFORD and
IRA BRONSON,
Attorneys for Defendant,
Frederick William Low.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Feb. 19, 1915. Arthur Lang, Clerk. By T. P. Geraghty, Deputy. [20]

*In the District Court for the District of Alaska,
Division Number Three.*

No. 593.

UNITED STATES OF AMERICA,

Plaintiffs,

vs.

WILLIAM B. POLAND and FREDERICK WILLIAM LOW,

Defendants.

**Demurrer of Defendant, William P. Poland [to
Amended Complaint].**

Comes now William B. Poland, one of the defendants above named, by his attorneys, S. O. Morford and Ira Bronson, and demurs to plaintiffs amended complaint on the ground that it does not state facts sufficient to constitute a cause of action at law or to entitle plaintiffs to relief in equity against this defendant and upon the further ground that it appears from the face of the complaint that this defendant is not a party to this action.

S. O. MORFORD and
IRA BRONSON,
Attorneys for Defendant,
William B. Poland.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Feb. 19, 1915. Arthur Lang, Clerk. By T. P. Geraghty, Deputy. [21]

*In the District Court for the Territory of Alaska,
Third Division.*

No. 593.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

WILLIAM B. POLAND and FREDERICK WILLIAM LOW,

Defendants.

Decision on Demurrer [to Amended Complaint].

On January 20, 1908, a patent for a fraction less than 160 acres of land, situate on the shore of Resurrection Bay, near Seward, Alaska, and designated as U. S. Survey #241, was issued to the defendant Poland, under S. A. H. right. On the 22d day of March, 1909, a second patent was issued to said defendant Poland for 160 acres of land embraced within U. S. Survey #242, which adjoins the said survey #241, on the northerly side; applications for patent to both of said surveys #241 and 242 having been made on the 26th day of April, 1906, in the U. S. Land Office at Juneau, Alaska.

The plaintiff brings this action to cancel the patent for the land embraced in said survey #242 for the reason that it is in violation of the terms of an Act of Congress, approved March 3, 1903 (Sec. 101, Compiled Laws of Alaska), which provides that "no more than 160 acres shall be entered in "any single body" by such scrip, lieu selection, or soldier's

additional homestead right," plaintiff's contention being that the said two surveys being contiguous constitute a "single body" within the meaning of said law.

Plaintiff's complaint alleges that the Assistant Commissioner of the General Land Office, under the erroneous and mistaken belief that the laws gave said Poland a right to said land and that he was entitled under the law to receive patent therefor, mistakenly and erroneously, without authority, and in violation of law, and without jurisdiction so to do, approved the entry and application of the said Poland for the land embraced within said Survey #242. [22]

The complaint further alleges that Poland filed or caused to be filed in the United States Land Office at Juneau, Alaska—

"in support of his said application for a patent to the land embraced in said Survey #242, an affidavit, subscribed and sworn to by H. E. Revell and Frank Ballaine, which affidavit contained the following false statement:

Said tract of land (referring to the land embraced in said Survey #242) does not exceed 160 acres in extent and is in frontage less than 160 rods along the shore of any navigable water, and is more than eighty rods distant from any other survey or entry under the provisions of said Act of May 14, 1898, the Act referred to in said statement being the Act of Congress entitled "An Act extending the homestead laws and providing for a right of

way for railroads in the District of Alaska, and for other purposes" approved May 14, 1898, as amended by the Act of Congress entitled "An Act to amend Section One of the Act of Congress approved May fourteenth, eighteen hundred and ninety-eight, entitled 'An Act extending the homestead laws and providing for a right of way for railroads in the district of Alaska' approved March 3, 1903."

I know of no law requiring one location or survey under said Act to be distant eighty rods from any other survey or entry made under the provisions of the said Act. Said Act does provide that "along the shore of any navigable water a space of at least 80 rods shall be reserved from entry between all such claims." But Survey #242 is not along the shore of any navigable water, but is on the northerly or landward side of said Survey #241, which is along the shore of Resurrection Bay. If one location or entry under said Act was required to be eighty rods distant from another survey or entry under the provisions of the same act, it would lead to a manifest absurdity, in that each location or survey would stand alone surrounded by vacant lands on each side and corner, a distance of eighty rods in each direction.

The United States Attorney contends that the intent of Congress in enacting this law was to restrict one individual from acquiring title to more than 160 acres, even by separate locations and entries if the same be contiguous, but the Act does not say so; it simply says that not more than 160 acres shall be *entered* in "any single body." The words "locate"

and "enter" are practically synonymous, each being a step or proceeding in the matter of acquiring title from the United States to public lands.

The United States mining laws for many years have provided that [23] no location of a placer claim shall exceed 160 acres for any one person or association of persons (Sec. 2330, Rev. Stats.), but it has never been claimed that this restricted the same person or association of persons from making two locations immediately adjoining. The same reasoning would apply to one case as to the other, but in this case, if Congress intended to restrict an individual from locating or acquiring title to more than one 160 acre tract of land, it would have been very easy to have expressed that intent. It seems to me that it would violate all rules of statutory construction if we should read into said Act something which was not expressed in it. The language is plain, clear and complete and does not require any forced construction to ascertain its meaning or intent.

Congress, wherever it has sought to restrict the right of an individual to more than one claim or to a certain number of acres, has always expressly provided such restriction; for instance in limiting an individual to one homestead, or one pre-emption claim, or other claims upon the public domain of the United States. The only limitation sought to be made upon the number of claims which can be located in Alaska, was by an Act of Congress, approved August 1, 1912, Sec. 129-C, Comp. Laws of Alaska, which provides that—

"no person shall thereafter locate, cause or procure to be located, for himself, more than two placer mining claims in any calendar month, provided that one or both of such locations may be included within an association claim."

It might be argued that it is a useless thing to provide that no more than 160 acres of land shall be entered in one single body under said Act of March 3, 1903, if two such locations or claims could be entered or patented and they adjoined each other, but this is exactly what has been done for nearly fifty years, in another class of public land entries.

In the case of Placer mining claims, of 160 acres, it might just as well be asked, why should a claim or location be limited to 160 acres, when two or more of such locations may be entered by the same locator when they adjoin, and virtually constitute one body, tract or area greatly in excess of the amount limited to a single location? The answer probably is that a limitation must be made [24] somewhere, otherwise one locator could locate the whole country, and it was probably placed at 160 acres as being a reasonable area to be included in one location, the presumption being that the additional expense of locating, surveying and other expenses attendant upon holding and patenting the ground will operate as a check on excessive locating or patenting by one individual or association.

In a recent case in the U. S. District Court for the Western District of Washington, *Shenk vs. Aumiller*, 217 Fed. Rep. 969, the Court says:

"Reference to the act of August 30, 1890, shows that Congress excluded from entry or settlement '*under any of the land laws* * * more than 320 acres in the aggregate *under all of said laws.*' This includes every classification. In the construction subsequently placed upon this act Congress referred to only two classifications of land: (a) Agricultural lands; and (b) mineral lands. The primary and general rule of statutory construction is that the intent of the lawmaker must be ascertained, when the language employed is involved and the intent not clearly expressed. The purpose for which the act under consideration is enacted being a matter of first importance in arriving at the solution of the question presented, I think it is proper for the Court to consider that the conditions of the United States with relation to increase of population were greatly changed in 1890 from the conditions existing at the dates of the enactment of the various public land *lands*, and that the spirit of the administration of the public land laws was to benefit the many and not the few. It is common knowledge that in 1890 the public land area open to settlement was becoming very limited. It appears that Congress adopted a new policy by limiting the number of acres to be entered by a person '*under any of the land laws*' and '*under all of the laws.*' "

Reasoning from like considerations in this case it may be said that conditions in Alaska are very dis-

similar from what they are in the States of the Union, and that the Congress of the United States recognized this by fixing 320 acres as the amount which could be taken in a homestead in Alaska. There is little or no danger of monopolization of the nonmineral lands of Alaska by an excessive number of entries being made by one locator. There was some such tendency in the matter of locating mining claims, which was sought to be checked by the act of August 1, 1912, above referred to. The only likelihood of any monopoly is along the shore line of navigable waters and this is sufficiently guarded against by the provisions in said [25] Act of March 3, 1903, reserving eighty acres along the shore of navigable waters between entries made under such act.

I do not see where there is any fraud on the part of the defendant Poland in entering the two said separate tracts of land under said act, even though the same adjoined each other, and the demurrer will have to be sustained.

Done at Valdez, Alaska, this 23d day of March, 1915.

FRED M. BROWN,
District Judge.

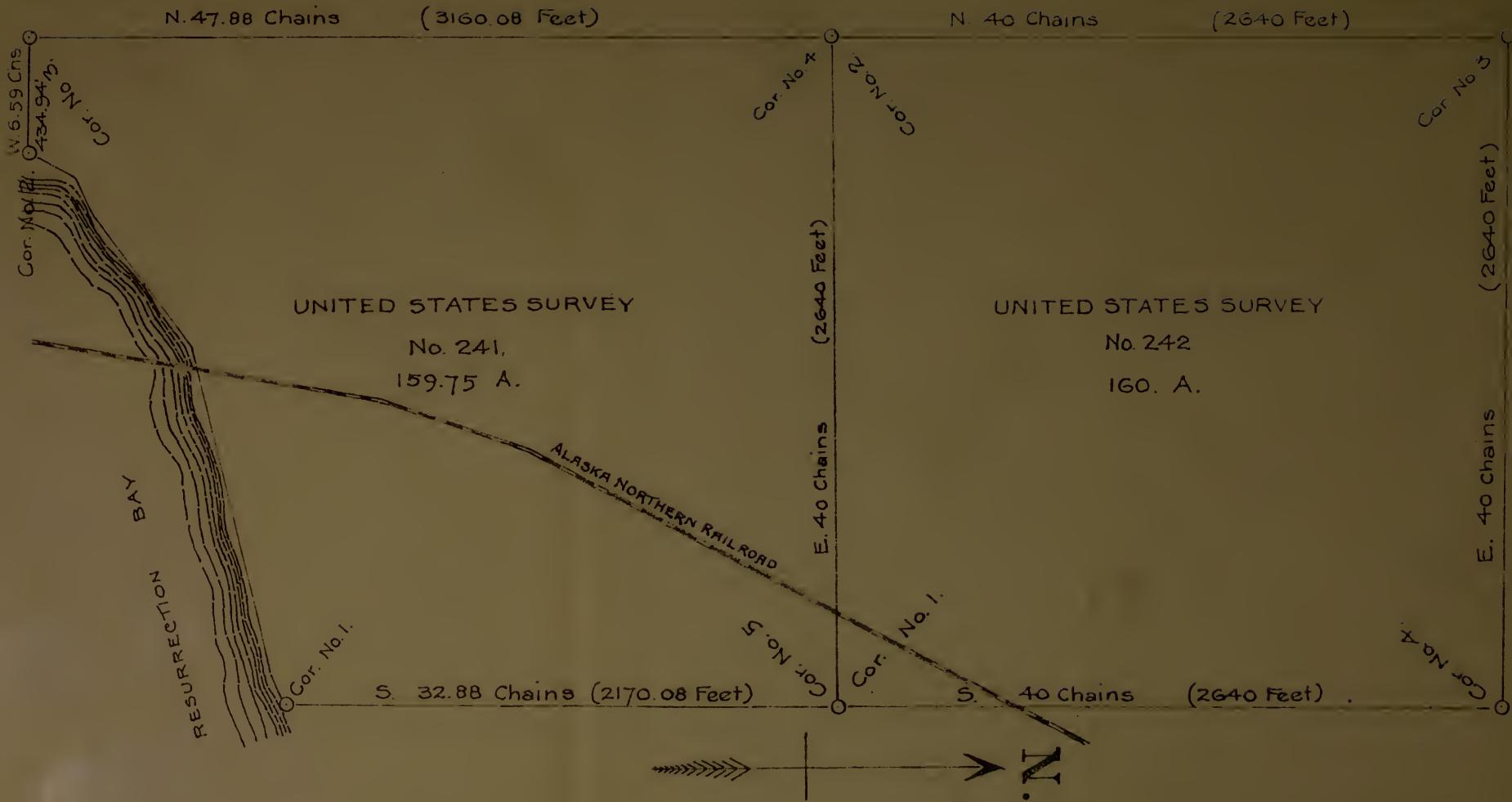
Entered Court Journal No. 9, page No. 30.

Filed in the District Court, Territory of Alaska, Third Division. Mar. 23, 1915. Arthur Lang, Clerk. By Chas. A. Hand, Deputy. [26]

FILED in the District Court,
Territory of Alaska, Third Division.

MAR 24 1915

ARTHUR LANG, Clerk
Chas. W. Lang, Deputy



*In the District Court for the Territory of Alaska,
Division Number Three.*

UNITED STATES OF AMERICA,

Plaintiffs,

vs.

WILLIAM B. POLAND and FREDERICK WILLIAM LOW,

Defendants.

Application and Motion for Leave to File Affidavits Showing Value of Subject Matter in Controversy.

Comes now the plaintiffs and make application to the Court for leave to file the affidavits of J. H. Romig, Edmund Rudolph, and F. B. Wood, showing the amount involved and the value of the subject matter in controversy in the above-entitled cause, which affidavits are tendered herewith.

WILLIAM N. SPENCE,

United States Attorney.

Due service of the foregoing motion and application hereby acknowledged in Seward, Territory of Alaska, Third Judicial Division, by receiving a true copy thereof certified as such by William A. Munly, Assistant United States Attorney.

This 13th day of April, 1915.

S. O. MORFORD,
Attorney for Defendants.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division, Apr. 15, 1915. Arthur Lang, Clerk. By T. P. Geraghty, Deputy. [28]

*In the District Court for the Territory of Alaska,
Third Division.*

No. 593.

UNITED STATES OF AMERICA,

Plaintiffs,

vs.

WILLIAM B. POLAND and FREDERICK WILLIAM LOW,

Defendants.

**Order Allowing Filing of Affidavits Showing Value
of Subject Matter in Controversy.**

This matter coming on for a hearing upon the motion and application for leave to file the affidavits of J. H. Romig, F. B. Wood and Edmund Rudolph, showing the amount involved and the value of the subject matter in controversy in the above-entitled suit, the plaintiffs appearing by William N. Spence, United States Attorney, and the defendants by S. O. Morford, attorney for said defendants, and after argument and the Court being advised in the premises, said motion and application is allowed.

It is therefore ordered that the affidavits of said J. H. Romig, F. B. Wood, and Edmund Rudolph, showing the amount involved and the value of the subject matter in controversy in the above-entitled suit be allowed to be filed herein, and the same are hereby

made a part of the record in the above-entitled suit.

Done in open court this tenth day of May, 1914.

FRED M. BROWN,
District Judge.

To which defendant excepts and exception is allowed.

FRED M. BROWN,
Judge.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division, May 10, 1915. Arthur Lang, Clerk. By T. P. Geraghty, Deputy.

Entered Court Journal No. 9, page No. 118. [29]

[Affidavit of Edmund Rudolph, Re Value of Subject Matter in Controversy.]

*In the District Court for the Territory of Alaska,
Division Number Three.*

UNITED STATES OF AMERICA,

Plaintiffs,

vs.

WILLIAM B. POLAND and FREDERICK WILLIAM LOW,

Defendants.

United States of America,
Territory of Alaska,
Third Division,—ss.

I, Edmund Rudolph, being first duly sworn, depose and say: I am a resident of the Town of Seward, in the Territory of Alaska; that I am acquainted with the value of the following described real property

situate in the Territory of Alaska, in the Seward Recording District, to wit:

Beginning at corner No. 1 near the north shore of Resurrection Bay, identical with corner No. 5, U. S. Survey No. 241, an iron pipe three inches in diameter, marked S. 242, cor. No. 1; thence west 40 chains to corner No. 2, an iron pipe three inches in diameter, marked S. 242, cor. No. 2, thence north 40 chains to corner No. 3, an iron pipe three inches in diameter, marked S. 242, cor. No. 3; thence east 40 chains to corner No. 4, an iron pipe three inches in diameter marked S. 242, cor. No. 4; thence south 40 chains to corner No. 1, the place of beginning, containing one hundred and sixty acres, being the land embraced within United States Survey No. 242, according to the official plat of said survey returned to the general land office by the Surveyor General.

That said property is the same property that is involved in the above-entitled suit brought by the United States against the defendants for the purpose of canceling a patent to said land. That said land is situate a short distance from said Town of Seward, Alaska.

That the value of said land as above described and in controversy in said suit is Five Thousand dollars.

EDMUND RUDOLPH. [30]

Subscribed and sworn to before me this 3d day of April, 1915.

[Seal] WM. H. WHITTLESEY,

Notary Public for the Territory of Alaska.

My commission expires Nov. 30th, 1917.

United States of America,
Territory of Alaska,
Third Judicial Division,—ss.

I, William H. Whittlesey, being first duly sworn, depose and say: That I am a citizen of the United States, over the age of twenty-one years and qualified to be a witness in this case; that I did on the 6th day of April, 1915, at Seward, Alaska, serve the foregoing affidavit upon S. O. Morford, Esq., Attorney for defendants herein, by delivering to and leaving with him, personally, a certified copy thereof.

WILLIAM H. WHITTLESEY.

Subscribed and sworn to before me this 6th day of April, 1915.

[Seal] CURTIS R. MORFORD,
Notary Public for Alaska.

My commission expires Oct. 8, 1915.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division, Apr. 15, 1915. Arthur Lang, Clerk. By T. P. Geraghty, Deputy. [31]

[Affidavit of F. B. Wood, Re Value of Subject Matter
in Controversy.]

*In the District Court for the Territory of Alaska,
Division Number Three.*

UNITED STATES OF AMERICA,

Plaintiffs,

vs.

WILLIAM B. POLAND and FREDERICK WILL-
IAM LOW,

Defendants.

United States of America,
Territory of Alaska,
Third Division,—ss.

I, F. B. Wood, being first duly sworn, depose and say: I am a resident of the Town of Seward, in the Territory of Alaska; that I am acquainted with the value of the following described real property situate in the Territory of Alaska, in the Seward Recording District, to wit:

Beginning at corner No. 1 near the north shore of Resurrection Bay, identical with corner No. 5, U. S. Survey No. 241, an iron pipe three inches in diameter, marked S. 242, cor. No. 1; thence west 40 chains to corner No. 2, an iron pipe three inches in diameter, marked S. 242, cor. No. 2, thence north 40 chains to corner No. 3, an iron pipe three inches in diameter, marked S. 242, cor. No. 3; thence east 40 chains to corner No. 4, an iron pipe three inches in

diameter marked S. 242, cor. No. 4; thence south 40 chains to corner No. 1, the place of beginning, containing one hundred and sixty acres, being the land embraced within United States Survey No. 242, according to the official plat of said survey returned to the general land office by the Surveyor General.

That said property is the same property that is involved in the above-entitled suit brought by the United States against the defendants for the purpose of canceling a patent to said land. That said land is situate a short distance from said Town of Seward, Alaska.

That the value of said land as above described and in controversy in said suit is Five Thousand Dollars.

F. B. WOOD. [32]

Subscribed and sworn to before me this 3d day of April, 1915.

[Seal]

WM. H. WHITTLESEY,
Notary Public for Alaska.

My commission expires Nov. 30, 1917.

Due service of the foregoing affidavit is hereby acknowledged in Seward, Territory of Alaska, Third Division, by receiving a copy thereof, certified as such by William H. Whittlesey, Assistant United States Attorney.

This —— day of April, 1915.

Attorney for Defendants.

United States of America,
Territory of Alaska,
Third Judicial Division,—ss.

I, William H. Whittlesey, being first duly sworn, depose and say: That I am a citizen of the United States, over the age of twenty-one years and qualified to be a witness in this case; that I did on the 6th day of April, 1915, at Seward, Alaska, serve the foregoing affidavit upon S. O. Morford, Esq., Attorney for Defendants herein, by delivering to and leaving with him, personally, a certified copy thereof.

WILLIAM H. WHITTLESEY.

Subscribed and sworn to before me this 6th day of April, 1915.

[Seal]

CURTIS R. MORFORD,

Notary Public for Alaska.

My commission expires Oct. 9, 1915.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division, Apr. 15, 1915. Arthur Lang, Clerk. By T. P. Geraghty, Deputy. [33]

[Affidavit of J. H. Romig, Re Value of Subject
Matter in Controversy.]

*In the District Court for the Territory of Alaska,
Division Number Three.*

UNITED STATES OF AMERICA,

Plaintiffs,

vs.

WILLIAM B. POLAND and FREDERICK WILL-
IAM LOW,

Defendants.

United States of America,
Territory of Alaska,
Third Division,—ss.

I, J. H. Romig, being first duly sworn, depose and say: I am a resident of the Town of Seward, in the Territory of Alaska; that I am acquainted with the value of the following described real property situate in the Territory of Alaska, in the Seward Recording District, to wit:

Beginning at corner No. 1 near the north shore of Resurrection Bay, identical with corner No. 5, U. S. Survey No. 241, an iron pipe three inches in diameter, marked S. 242, cor. No. 1; thence west 40 chains to corner No. 2, an iron pipe three inches in diameter, marked S. 242, cor. No. 2; thence north 40 chains to corner No. 3, an iron pipe three inches in diameter, marked S. 242, cor. No. 3; thence east 40 chains to corner No. 4, an iron pipe three inches in

diameter marked S. 242, cor. No. 4; thence south 40 chains to corner No. 1, the place of beginning, containing one hundred and sixty acres, being the land embraced within United States Survey No. 242, according to the official plat of said survey returned to the general land office by the Surveyor General.

That said property is the same property that is involved in the above-entitled suit brought by the United States against the defendants for the purpose of canceling a patent to said land. That said land is situate a short distance from said Town of Seward, Alaska.

That the value of said land as above described and in controversy in said suit is Three Thousand and 00/100 Dollars.

J. H. ROMIG. [34]

Subscribed and sworn to before me this 3d day of April, 1915.

[Seal] WM. H. WHITTLESEY,
Notary Public for the Territory of Alaska.

My commission expires Nov. 30, 1917.

United States of America,
Territory of Alaska,
Third Judicial Division,—ss.

I, William H. Whittlesey, being first duly sworn, depose and say: That I am a citizen of the United States, over the age of twenty-one years and qualified to be a witness in this case; that I did on the 6th day of April, 1915, at Seward, Alaska, serve the foregoing affidavit upon S. O. Morford, Esq., Attor-

ney for Defendants herein, by delivering to and leaving with him, personally, a certified copy thereof.

WILLIAM H. WHITTLESEY,

Subscribed and sworn to before me this 6th day of April, 1915.

CURTIS R. MORFORD,
Notary Public for Alaska.

My commission expires Oct. 9, 1915.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division, Apr. 15, 1915. Arthur Lang, Clerk. By T. P. Geraghty, Deputy. [35]

[Order of Dismissal.]

*In the District Court for the Territory of Alaska,
Third Division.*

No. 593.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

WILLIAM B. POLAND and FREDERICK WILLIAM LOW,

Defendants.

ORDER ON DEMURRER.

This cause coming on regularly to be heard upon demurrer of defendant to plaintiff's complaint, on the 23d day of March, 1915, plaintiff being represented by William N. Spence and Guy Brubecker, United States attorneys, and defendant being represented by S. O. Morford, Esq., and the Court hav-

ing heard the arguments of respective counsel, and being fully advised in the premises, rendered its decision in writing sustaining defendant's demurrer to plaintiff's complaint in all points therein, and the plaintiff declining to plead further.

It is hereby ordered, adjudged and decreed, that plaintiff's action be and hereby is dismissed.

FRED M. BROWN,
District Judge.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division, May 29, 1915. Arthur Lang, Clerk. By T. P. Geraghty, Deputy.

Entered in Court Journal No. 9, page No. 155. [36]

*In the District Court for the Territory of Alaska,
Third Division.*

No. 593.

UNITED STATES OF AMERICA,

Plaintiffs,

vs.

WILLIAM B. POLAND and FREDERICK
WILLIAM LOW,

Defendants.

Amended Decree.

This cause coming on to be heard upon motion of the defendants to amend the decree heretofore entered herein, on the 29 day of May, 1915, by dismissing the complaint and complaint as amended and the plaintiffs' action as to both of said defendants, and it appearing to the Court that in the decree here-

tofore entered herein as aforesaid, said decree applied to defendant instead of defendants, and it appearing that said error was made through inadvertence and mistake said motion to amend said decree is allowed;

It is therefore ordered, adjudged and decreed that the demurrer of the defendants and of each of said defendants to the plaintiffs' amended complaint be and the same is hereby sustained and the plaintiffs' complaint and amended complaint and the plaintiffs' said action be and the same are hereby dismissed.

Done in open court this 21st day of June, 1915.

FRED M. BROWN,
District Judge.

Filed in the District Court, Territory of Alaska,
Third Division, June 21, 1915. Arthur Lang, Clerk.
By T. P. Geraghty, Deputy.

Entered Court Journal No. 9, page No. 166. [37]

*In the District Court for the Territory of Alaska,
Third Division.*

No. 593.

UNITED STATES OF AMERICA,

Plaintiffs,

vs.

WILLIAM B. POLAND and FREDERICK
WILLIAM LOW,

Defendants.

Petition for Appeal.

To the Honorable, the Judge of the Above-entitled Court.

The above-named plaintiffs the United States of America, by and through William N. Spence, United States Attorney for the Third Division of the District of Alaska, acting under and by the direction of the Attorney General of the United States of America, conceiving themselves aggrieved by the order and decree made and entered in the above-named cause, on the 29 day of May, 1915, which order and decree was amended by the above-entitled court on the 21 day of June, 1915, wherein and whereby it was ordered, adjudged and decreed that the demurrs of the defendants and each of them to the amended complaint of the plaintiffs be sustained and that said plaintiffs' complaint, amended complaint, and action be and were dismissed, do hereby appeal from the said order and decree and amended decree to the United States Circuit Court of Appeals for the Ninth Circuit for the reasons specified in the assignment of errors filed herein, and said plaintiffs pray that this appeal be allowed and that a transcript of the record, papers, and proceedings upon which the said order and decrees were made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit.

WILLIAM N. SPENCE,
United States Attorney.

Dated this 22d day of June, 1915.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. June 2, 1915. Arthur Lang, Clerk. By T. P. Geraghty, Deputy. [38]

*In the District Court for the Territory of Alaska,
Third Division.*

No. 593.

UNITED STATES OF AMERICA,

Plaintiffs,

vs.

WILLIAM B. POLAND and FREDERICK
WILLIAM LOW,

Defendants.

Order Allowing Appeal.

Now, on this day come the plaintiffs the United States of America, by William N. Spence, United States Attorney for the above-entitled district, acting under and by the direction of the Attorney General of the United States of America, and present to the Court its petition praying for an order allowing an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from an order and decree of the above-entitled court made and entered herein on the 29 day of May, 1915, which order and decree was amended by the above-entitled court on June 21, 1915, ordering and decreeing that the demurrers of the defendants and the demurrer of each of said defendants to the amended complaint of the plaintiffs filed herein, be sustained and that the complaint, amended complaint, and action of the plain-

tiffs be dismissed and said plaintiffs also present a bond on said appeal with sufficient sureties in the sum of One Thousand Dollars (\$1000).

Whereupon it is ordered that the prayer of said petition be granted and that said plaintiffs the United States of America be and they are hereby allowed to take the appeal prayed for in said petition and that said bond presented by said plaintiffs be and the same is hereby approved.

Done in open court this 22d day of June, 1915.

FRED M. BROWN,
Judge of the Above-entitled Court.

[Endorsed]: Filed in the District Court, Ter. of Alaska, Third Div. June 22, 1915. Arthur Lang, Clerk. By T. P. Geraghty, Deputy.

[Endorsed]: Entered Court Journal No. 9, page 170. [39]

*In the District Court for the Territory of Alaska,
Third Division.*

No. 593.

UNITED STATES OF AMERICA,

Plaintiffs,

vs.

WILLIAM B. POLAND and FREDERICK
WILLIAM LOW,

Defendants.

Assignment of Errors.

Come now on this — day of June, 1915, the plaintiffs in the above-entitled cause and file the following assignment of errors which they will rely upon their

appeal from the order and decree made by this Honorable Court on the 29 day of May, 1915, which order and decree was amended on the 21 day of June, 1915, in the above-entitled cause.

I.

The Court erred in sustaining the demurrs of the defendants and the demurrer of each of said defendants to the plaintiffs' amended complaint.

II.

The Court erred in not overruling the said demurrs of the defendants and the demurrer of each of said defendants to said amended complaint of plaintiff.

III.

The Court erred in sustaining the demurrs of the defendants and the demurrer of each of said defendants to the complaint of the plaintiffs as amended.

IV.

The Court erred in not overruling said demurrs of the defendants and the demurrer of each of said defendants to the plaintiffs' complaint as amended.

[40]

V.

The Court erred in entering the decree and amended decree herein sustaining said demurrs of the defendants and the demurrer of each of said defendants to said amended complaint of the plaintiffs, and dismissing the action of the plaintiffs herein.

VI.

The Court erred in not overruling said demurrs of the defendants and the demurrer of each of said defendants to said amended complaint of the plain-

tiffs and in not requiring said defendants and each of them to answer said complaint as amended.

Wherefore, said plaintiffs pray the Court that said order and decree of the above-entitled court and said order and decree as amended as aforesaid may be reversed and that said court may be directed to enter a decree as set forth in the amended complaint of the plaintiffs.

WILLIAM N. SPENCE,
United States Attorney.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. June 22, 1915. Arthur Lang, Clerk. By T. P. Geraghty, Deputy. [41]

*In the District Court for the Territory of Alaska,
Third Division.*

No. 593.

UNITED STATES OF AMERICA,

Plaintiffs,

vs.

WILLIAM B. POLAND and FREDERICK
WILLIAM LOW,

Defendants.

Bond on Appeal.

KNOW ALL MEN BY THESE PRESENTS: That we, the United States of America, by and through William N. Spence, United States Attorney for the Territory of Alaska, Third Division, under the authority and by the direction of the Attorney General of the United States, as principal and Albert

E. Grigsby and M. F. Hendrickson, of Valdez, Alaska, are held and firmly bound unto William B. Poland and Frederick William Low in the sum of One Thousand Dollars (\$1000) to be paid to said William B. Poland and Frederick William Low, their attorneys, executors, or administrators. To which payment, well and truly to be made, we bind ourselves, jointly and severally, our executors and administrators, firmly by these presents.

Sealed with our seals, and dated this 22 day of June, 1915.

Whereas the above-named United States of America have appealed to the United States Circuit Court of Appeals for the Ninth Circuit to reverse the decree and amended decree in the above-entitled cause entered and rendered in the above-entitled action by the District Court for the Territory of Alaska, Third Division, made and entered on the 29 day of May, 1915, amended by decree and order entered on 21 day of June, 1915.

Now, therefore, the condition of this obligation is such that if the above-named United States of America shall prosecute said appeal to effect, and answer all costs and damages, if said United States of America shall fail to make good said appeal, then [42] this obligation shall be void; otherwise the same shall be and remain in full force, virtue, and effect. In testimony whereof said United States of America has caused *this* presents to be signed by William N. Spence, United States Attorney for the Territory of Alaska, Third Division, acting under the authority and by the direction of the Attorney General of the

United States and the said Albert B. Grigsby and M. F. Hendrickson have signed and sealed these presents the day and year above written.

UNITED STATES OF AMERICA.

By WILLIAM N. SPENCE,

United States Attorney.

ALBERT E. GRIGSBY. [Seal]

M. F. HENDRICKSON. [Seal]

United States of America,

Territory of Alaska,

Third Division,—ss.

I, Albert E. Grigsby and M. F. Hendrickson, being each severally and duly sworn, depose and say: That I am one of the sureties in the foregoing bond; that I am a resident and freeholder within said District; that I am worth in property therein over the sum of Two Thousand Dollars (\$2000), over and above all my just debts and liabilities, exclusive of property exempt from execution; that I am not a counselor, attorney, marshal, clerk, or other officer of any court.

ALBERT E. GRIGSBY.

M. F. HENDRICKSON.

Subscribed and sworn to before me this 22d day of June, 1915.

[Seal] T. P. GERAGHTY,
Deputy Clerk of Court, Ter. of Alaska, Third Division.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. June 22, 1915. Arthur Lang, Clerk. By T. P. Geraghty, Deputy. [43]

*In the District Court for the Territory of Alaska,
Third Division.*

No. 593.

UNITED STATES OF AMERICA,

Plaintiffs,

vs.

WILLIAM B. POLAND and FREDERICK
WILLIAM LOW,

Defendants.

Citation on Appeal [Copy].

To William B. Poland and Frederick William Low,
Defendants Above-named, and Each of Them,
Greeting:

Whereas, United States of America, plaintiffs above named, have lately appealed to the United States Circuit Court of Appeals for the Ninth Circuit from an order and decree rendered in the District Court for the Territory of Alaska, Third Division, which order and decree was entered in the above-entitled court on May 29, 1915, and which decree was amended therein on June 21, 1915, in your favor, and have given the security required by law; you are therefore hereby cited and admonished to be and appear before said United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, within thirty days from the date hereof, to show cause, if any there be, why the said decrees should not be corrected, and speedy justice should not be done to the parties in that behalf.

Given under my hand at Valdez, in said district,
this 22d day of June, in the year of our Lord one thou-
sand, nine hundred and fifteen.

FRED M. BROWN,
Judge of the Above-entitled Court.

[Endorsed]: Filed in the District Court, Territory
of Alaska, Third Division. June 22d, 1915. Arthur
Lang, Clerk. By T. P. Geraghty, Deputy.

Entered Court Journal No. 9, page No. 171. [44]

United States of America,
Territory of Alaska,
Third Division,—ss.

I hereby certify and return that I served the an-
nexed Citation on Appeal on S. O. Morford, attorney
of record, for the within named defendants William
B. Poland and Frederick Wm. Low, by handing to
and leaving a true and correct copy thereof with him
personally, at Seward, in said District for said Divi-
sion, on the 25th day of June, in the year of our Lord
one thousand nine hundred and fifteen.

F. R. BRENNEMAN,
United States Marshal.
By Isaac Evans,
Deputy U. S. Marshal.

[Endorsed]: Filed in the District Court, Territory
of Alaska, Third Division. June 28, 1915. Arthur
Lang, Clerk. [45]

*In the District Court for the Territory of Alaska,
Third Division.*

No. 593.

UNITED STATES OF AMERICA,

Plaintiffs,

vs.

WILLIAM B. POLAND and FREDERICK
WILLIAM LOW,

Defendants.

Order Extending Time to File Record.

Now, at this day, for good cause shown to the above-entitled court, it is ordered that the time for filing the transcript of record, proceedings, and papers in the above-entitled cause in the United States Circuit Court of Appeals for the Ninth Circuit be, and the same is hereby extended until 31st day of July, 1915.

Done in open court this 24th day of June, 1915.

FRED M. BROWN,

Judge of the Above-entitled Court.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. June 24, 1915. Arthur Lang, Clerk. By T. P. Geraghty, Deputy.

Entered Court Journal No. 9, page No. 175. [46]

*In the District Court for the Territory of Alaska,
Third Division.*

No. 593.

UNITED STATES OF AMERICA,

Plaintiffs,

vs.

WILLIAM B. POLAND and FREDERICK
WILLIAM LOW,

Defendants.

Acknowledgment of Service of Papers on Appeal.

I, S. O. Morford, attorney of record for the defendants in the above-entitled cause, hereby acknowledge service in the matter of appeal in the above-entitled cause and court on 28th day of June, 1915, at Valdez, Alaska, in the above-entitled district, by receiving copies of the original files and records as follows, to wit:

Petition for Appeal.

Order Allowing Appeal.

Assignment of Errors.

Bond for Cost on Appeal.

Citation.

Order Extending Time to File Records and Papers
in Said Appeal.

Stipulation as to Papers, Documents and Records to
be Sent to the United States Circuit Court of
Appeals for the Ninth Circuit.

Praecipe.

S. O. MORFORD,

Attorney for Above-named Defendants.

Filed in the District Court, Territory of Alaska,
Third Division. Jun. 28, 1915. Arthur Lang, Clerk.
By _____, Deputy. [47]

*In the District Court for the Territory of Alaska,
Third Division.*

No. 593.

UNITED STATES OF AMERICA,

Plaintiffs,

vs.

WILLIAM B. POLAND and FREDERICK
WILLIAM LOW,

Defendants.

**Stipulation as to Papers, Documents and Records to
be Sent to the United States Circuit Court of
Appeals for the Ninth Circuit.**

It is hereby stipulated by and between the plaintiffs, United States of America, by plaintiffs' attorneys William N. Spence, United States Attorney, and William A. Muny, Assistant United States Attorney, and the defendants by their attorney, S. O. Morford, that the transcript of the record on appeal of the above-entitled cause shall include the following papers and documents:

Application for Leave to File Amended Complaint
by Plaintiffs.

Order Granting Leave to File Amended Complaint.
Amended Complaint.

Demurrer of the Defendants to the Amended Com-
plaint.

- Demurrer of the Defendant Frederick William Low.
- Demurrer of the Defendant William B. Poland.
- Court's Decision Sustaining Demurrsers.
- Blue-print Showing Location of Land in Controversy.
- Application and Motion for Leave to File Affidavits Showing Value of Subject Matter in Controversy.
- Order Allowing Filing of Affidavits Showing Value of Subject Matter in Controversy.
- Affidavits of Edmund Rudolph, F. B. Wood, and J. H. Romig, Showing Value of Subject Matter in Controversy.
- Order and Decree on Demurrer Sustaining Demurrsers of [48] of Defendants and Dismissing Plaintiffs' Action.
- Amended Decree Sustaining Demurrsers of the Defendants and Each of Them and Dismissing Plaintiffs' Complaint, Amended Complaint, and Action.
- Petition of Plaintiffs for Appeal.
- Order Allowing Appeal.
- Assignment of Errors.
- Bond on Appeal with Justification Thereon.
- Citation on Appeal with Return and Acknowledgment of Service.
- Order Extending Time to File Appeal in Circuit Court of Appeals.
- Acknowledgment of Service of All the Different Papers as Set Forth in Said Acknowledgment.

Stipulation as to Papers, to be Sent to the Circuit
Court of Appeals for the Ninth Circuit.
Praecipe.

And the Clerk of the above-entitled Court is hereby authorized to eliminate from the said record on appeal all the other matters in said record.

UNITED STATES OF AMERICA.

By WILLIAM N. SPENCE,
United States Attorney.
WILLIAM A. MUNLY,
Assistant U. S. Attorney.
S. O. MORFORD,
Attorney for Defendants.

Filed in the District Court, Territory of Alaska,
Third Division. Jun. 28, 1915. Arthur Lang, Clerk.
By _____, Deputy.

Dated this 28th day of June, 1915. [49]

*In the District Court for the Territory of Alaska,
Third Division.*

No. 593.

UNITED STATES OF AMERICA,

Plaintiffs,

vs.

WILLIAM B. POLAND and FREDERICK WILLIAM LOW,
Defendants.

Praecipe for Transcript of Record.

To the Clerk of the Above-entitled Court:

You will please make, certify and transmit forth-

with to the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, a copy of the record in the above-entitled cause, as a return to the appeal heretofore taken and granted by the plaintiffs, the United States of America, to review the decree and amended decree in the above-entitled cause, which record shall consist of the following files and records, to wit:

Application for Leave to File Amended Complaint by the Plaintiffs.

Order Granting Leave to File Amended Complaint. Amended Complaint.

Demurrer of the Defendants to the Amended Complaint.

Demurrer of the Defendant Frederick William Low.

Demurrer of the Defendant William B. Poland.

Court's Decision Sustaining Demurrsers.

Blue-print Showing Location of Land in Controversy.

Application and Motion for Leave to File Affidavits Showing Value of Subject Matter in Controversy.

Order Allowing Filing of Affidavits Showing Value of Subject Matter in Controversy. [50]

Affidavits of Edmund Rudolph, F. B. Wood, and J. H. Romig, Showing Value of Subject Matter in Controversy.

Order and Decree on Demurrer Sustaining Demurrsers of Defendants and Dismissing Plaintiff's Action.

Amended Decree Sustaining Demurrers of the Defendants and Each of Them and Dismissing Plaintiffs' Complaint, Amended Complaint, and Action.

Petition of Plaintiffs for Appeal.

Order Allowing Appeal.

Assignment of Errors.

Bond on Appeal, with Justification Thereon.

Citation on Appeal with Return and Acknowledgment of Service.

Order Extending Time to File Appeal in Circuit Court of Appeals.

Acknowledgment of Service of All the Different Papers as Set Forth in said Acknowledgment.

Stipulation as to Papers, to be Sent to the Circuit Court of Appeals for the Ninth Circuit.

This Praeicepe.

WILLIAM N. SPENCE,
United States Attorney.

Filed in the District Court, Territory of Alaska, Third Division. Jun. 28, _____. Arthur Lang, Clerk. By _____, Deputy. [51]

*In the District Court for the Territory of Alaska,
Third Division.*

**Certificate of Clerk U. S. District Court to Transcript
of Record.**

United States of America,

Territory of Alaska.

Third Division,—ss.

I, Arthur Lang, Clerk of the District Court for the

Territory of Alaska, Third Division, do hereby certify that the above and foregoing, and hereto annexed 51 pages, numbered from 1 to 51, inclusive, are a full, true and correct transcript of records and files of the proceedings in the above-entitled cause, as the same appears on the records and files in my office; that this transcript is made in accordance with the plaintiff's praecipe on file herein. I further certify that the foregoing transcript has been prepared, examined and certified to by me on behalf of the plaintiff and plaintiff in error, the United States of America.

In witness whereof, I have hereunto set my hand and affixed the seal of this court at Valdez, Alaska, this 28th day of June, A. D. 1915.

[Seal] ARTHUR LANG,
Clerk of the District Court, Territory of Alaska,
Third Division. [52]

[Endorsed]: No. 2621. United States Circuit Court of Appeals for the Ninth Circuit. The United States of America, Appellant, vs. William B. Poland and Frederick William Low, Appellees. Transcript of Record. Upon Appeal from the United States District Court for the District of Alaska, Division No. 3.

Filed July 7, 1915.
F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Meredith Sawyer,
Deputy Clerk.